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December 1, 1997

Collette Zemitis
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Subject: Negative Declaration: Prospect Island Wildlife Habitat Restoration Project, Solano County; SCH #97102109

Dear Ms Zemitis:

Thank you for forwarding to the Delta Protection Commission the combined Negative Declaration and Finding of No Significant Impact for the Prospect Island Wildlife Habitat Restoration Project, in a document entitled "Draft Prospect Island Project Modification Report, October 1997". The Commission itself has not had the opportunity to review the material so these are staff comments only. The Delta Protection Commission is a State-authorized regional land use planning agency with no authority over State or federal projects, so these comments are advisory only. One of the Commission's key areas of responsibility is monitoring land use changes in the Delta, and seeking an appropriate balance between the three major land uses in the area: agriculture, wildlife habitat, and recreation.

The project is located in the Primary Zone of the Delta, within the Commission's planning and monitoring area, between the Sacramento Deepwater Ship Channel and Miner Slough. The site is bounded by private property to the north, and lands owned by the Port of Sacramento to the south. The environmental document states there are private lands within the study area. The comments largely ask for additional information so the Delta Protection Commission and staff can understand the nature and extent of improvements proposed for the site.

Plan Formulation:

The stated purpose of the project is twofold: to minimize on-going maintenance costs associated with levee maintenance along the Deepwater Ship Channel, and to provide aquatic and shaded riverine aquatic habitats to mitigate for past loses of similar habitat. To clarify the project, it would be helpful if the environmental document included the following information:

proposed project would provide opportunities for bird watching, relaxing, and possible canoeing or kayaking. Access to the property via the road to Arrowhead Harbor would be available to FWS personnel and adjacent landowners who have a gate key." The project description should indicate where the locked gate is to be located and should include a description of opportunities and restrictions for public access and recreation at the site including: small boat launching, boating, fishing, hunting, hiking, biking, picnicking, wildlife observation, etc. The project should include a description and location of any proposed facilities such as signage, small boat launch ramp, parking, paved or unpaved paths, benches, fishing piers, fish cleaning stations, restrooms, etc.

Evaluation of Conversion of Agricultural Land.

The environmental assessment/initial study states (p. 43) "Using the site assessment criteria set forth in the Farmland Protection Policy Act of 1981, as amended in 1994, the site receives 89 out of 160 possible points. According to the Farmland Protection Policy Act, farmland receiving a total farmland conversion impact rating less than 160 need not be given further consideration for protection, and alternative actions do not need to be considered. Based on these criteria, there would be no adverse effect to farmland resulting from implementation of the proposed action."

Review of the Farmland Conversion Impact Rating (Appendix D) against the criteria outlined in Section 658.5 CFR for July 5, 1984 indicate that some of the scores may be inaccurate. The following items should be re-evaluated:

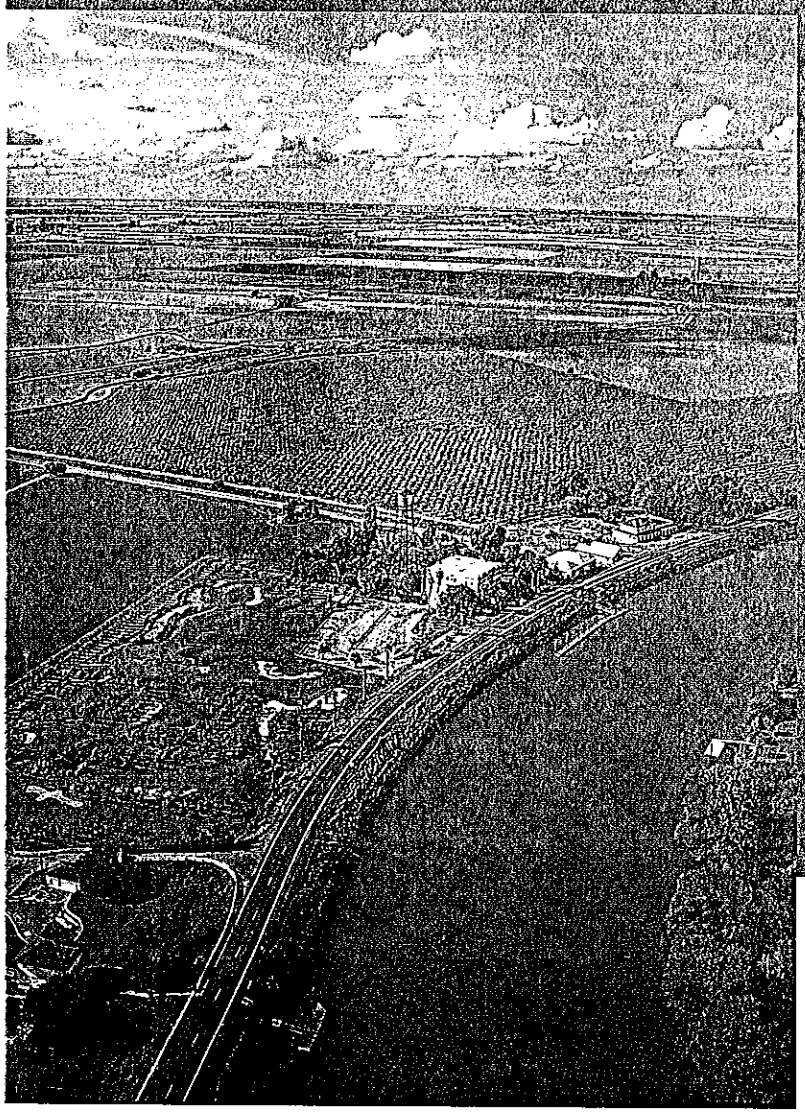
* Item 4, Protection Provided by State and Local Government, is rated 0 out of 20 points; at the time of acquisition the site was under a Williamson Act contract, was protected by a special Solano County ordinance, and within the Primary Zone of the Delta.

* Item 6, Distance to Urban Support Services, is rated 10 out of 15 points; there are no nearby water lines, sewer lines, or other local facilities and services which would promote nonagricultural use of the site.

* Item 7, Size of Present Farm Unit Compared to Average, is rated 9 out of 10 points; the average farm size in Solano County is 391 acres, the site is 1,316 acres.

* Item 9, Availability of Farm Support Services, is rated 0 out of 5 points; the site does have available an adequate supply of farm support services and markets, as indicated by the farming of the site until purchased by the Bureau of Reclamation.

* Item 10, On-Farm Investments, is rated 0 out of 20 points; the farm does not have extensive outbuildings and structures, but does have levees, channels, irrigation ditches, pumps, and siphons associated with the agricultural operation.



QUESTIONS City Officials Should Ask About CALFED

by Marci Coglianese and Martha Lennihan

With a view of the Central Valley to the north, the Sacramento River winds past the community of Ryde in the Delta.

Not since Humphrey the Humpback Whale navigated its sloughs and byways has so much attention been focused on California's Bay-Delta region. Today, national, state and local interest groups are watching as CALFED, a consortium of 15 federal and state agencies, labors to develop a comprehensive program to improve the biological health of the West Coast's largest estuary and the quality and reliability of the drinking and irrigation water it supplies. CALFED's efforts are critical to California's ability to meet the challenges of supplying water to an expanding economy and population, so all cities have a stake in its success. But because CALFED's program is likely to affect each city to a varying degree and in a somewhat different way, city officials need to ask the following questions to evaluate the potential effects upon their own city.

Marci Coglianese is a city council member for the City of Rio Vista and a public agency attorney in the Sacramento-based law firm of McDonough Holland & Allen. Martha Lennihan practices natural resources and water law with Lennihan Law Offices in Sacramento, and has been amicus counsel to the League on significant water-related cases.

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Why Was CALFED Created?

The Bay-Delta is the hub of California's two largest water distribution systems, the federal Central Valley Project and the State Water Project, and of numerous smaller water systems. It supplies drinking water to two-thirds of Californians, and irrigation water to four million acres that produce 45 percent of the nation's fruits and vegetables. Water exports have contributed to a decline in the health of the Bay-Delta ecosystem, home to 750 fish, animal and bird species, some of which are deemed threatened or endangered. All 750 species require water for their habitat. CALFED was formed to address the escalating conflicts over water supply and management among competing urban, agricultural and environmental Bay-Delta water uses. The goal is to exchange competition for cooperation and create a program where all interests "improve together."

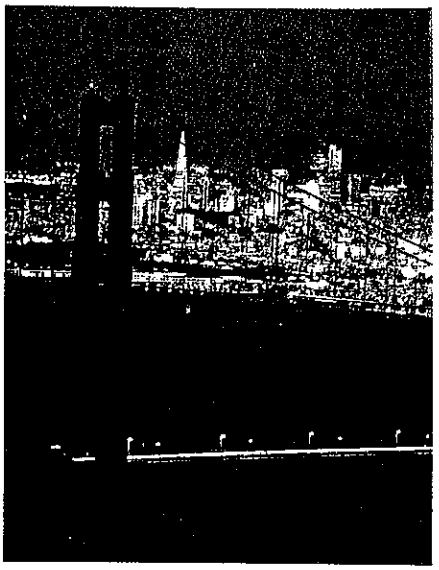
Bay-Delta dependent water supplies have already been substantially affected by the need to protect Bay-Delta species, such as winter-run salmon and delta smelt.

How Does CALFED Work?

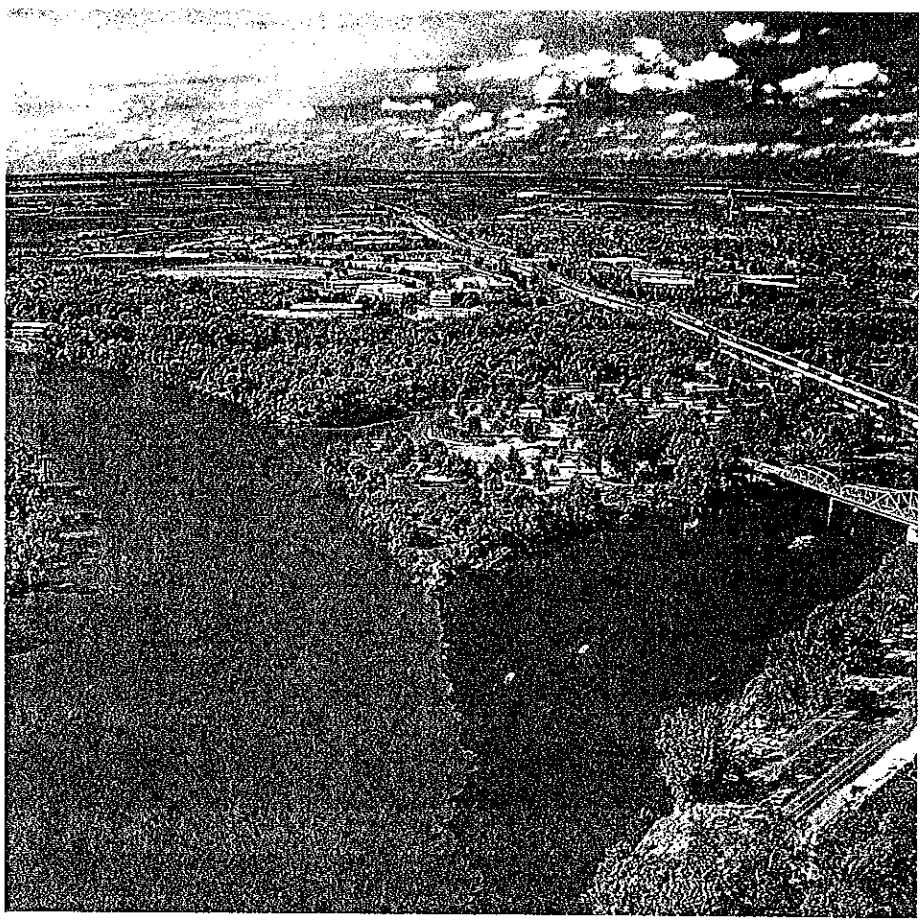
CALFED is headed by California's governor and the secretary of the U.S. Department of the Interior, and works through interagency committees comprising staff from state and federal member agencies. The Bay-Delta Advisory Council is the 34-member federally chartered citizens' advisory committee that reviews and comments on CALFED proposals.

Stages in the Process

The CALFED process has three phases. In Phase I, CALFED identified problems confronting the Bay-Delta, developed a mission statement and guiding principles, and devised three alternative solutions for conveying water through the Delta (see "What is CALFED?" page 10). By late 1999, CALFED expects to conclude Phase II with publication of a final Programmatic Environmental Impact Statement/Environmental Impact Report; and selection of a preferred program for Delta conveyance facilities, levee system integrity, water quality, ecosystem quality, water efficiency, water transfers and watershed management. Phase II is also intended to provide an action plan for the first seven years of Phase III, the 30-year program implementation phase. A Revised Phase II Report was recently issued, and is available from CALFED (see "For More Information About CALFED," page 9).



San Francisco Bay provides an illuminating backdrop for the Golden Gate Bridge.



The Sacramento River (left) meets the American River (right) near Discovery Park in Sacramento and then flows south into the Delta region.

How Could CALFED Affect Water Supplies?

CALFED does not directly affect water rights. However, it may have extensive impacts on the quantity, quality and timing of water available to supply many water rights. Bay-Delta dependent water supplies have already been substantially affected by the need to protect Bay-Delta species, such as winter-run salmon and delta smelt. This need has placed constraints on pumping and imposed other regulations that restrict the quantity and timing of water diversions. CALFED proposes an ambitious Ecosystem Restoration Plan to restore the health of the Bay-Delta system. This plan will require dedication of additional water for the environment.

To address the basic mismatch between water supply and demand, CALFED proposes

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Questions City Officials Should Ask, continued from page 4

an array of programs to increase the reliability and quality of water supplies by improving water management. These include:

- Urban and agricultural water conservation and recycling;
- Water transfers;
- Increased water storage (both groundwater and surface);
- Watershed management; and
- Water quality control and active water facilities monitoring and management.

City officials should familiarize themselves with their city's water source and evaluate how CALFED may affect their water supply and quality, as well as the natural, cultural and economic resources dependent upon them. Different cities will be affected differently. It is important for city officials to become educated about water issues, and to make their views known to CALFED (see "For More Information About CALFED," page 9).

Industries requiring high quality water may relocate to or away from a city, depending upon the reliability, quality and cost of its water supply.

What Will CALFED Cost? Who Will Pay?

No one is certain what the full CALFED program will be, how much it will cost or exactly how it will be financed. The recently issued Revised Phase II Report does not answer these questions. A key CALFED principle is that those who benefit from the program will pay their fair share of its costs. It is likely that a combination of public and user funds will finance the program. Methods for fairly allocating program costs have yet to be developed. CALFED estimates that program and capital costs for the first seven years of program implementation will be $4.4 billion. Storage facilities could cost up to an additional $5 billion; $450 million of the program's ecosystem restoration costs are being funded by Proposition 204, the Safe, Clean, Reliable Water Supply Act passed by voters in 1996. Congress has authorized $430 million for CALFED to date. CALFED also represents a source of funds for local projects that further CALFED's criteria.

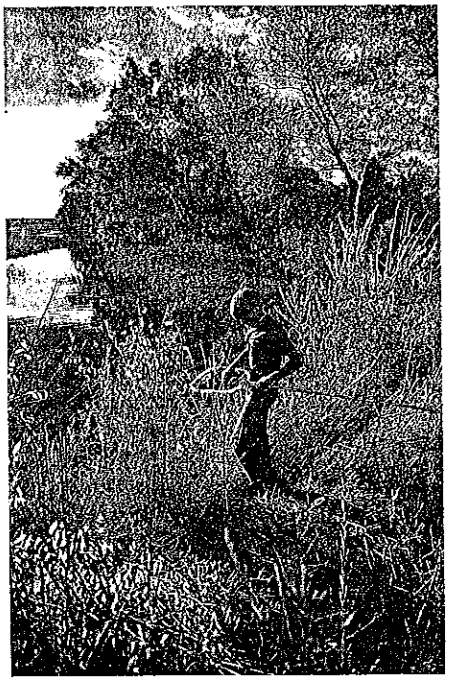
Could CALFED Affect Land use and Economic Development?

CALFED programs have the potential to affect both land use and economic development. The Environmental Restoration Program proposes to convert 115,000–200,000 acres of agricultural land to habitat, and to shore up levees. These lands are primarily located in the Delta region. Up to 100,000 acres of agricultural lands located elsewhere could be affected by "land fallowing" or retirement programs, and by construction of new storage and conveyance facilities. On the other hand, new water supply infrastructure and increased Delta capacity could enhance agricultural water supply and production. Changes in agricultural production, the state's biggest industry, would affect industries and businesses that serve agriculture, and affect the local tax base. These changes would have the most significant impact on local agriculturally based economies, though they could affect the price of food generally, depending on the magnitude of the CALFED activity. Proposals to remove some dams to improve fisheries could have local flood control implications.

Urban and urbanizing areas should also pay attention. The reliability, quality and quantity of Bay-Delta water influences the feasibility of economic and residential development in the many areas of the state that are dependent on water tributaries to, or derived from, the Bay-Delta system. Industries requiring high quality water may relocate to or away from a city, depending upon the reliability, quality and cost of its water supply. CALFED has the potential to enhance a city's prospects for customer satisfaction and economic development.

Why Is Bay-Delta Water Quality Important to Cities?

The Bay-Delta drains a 61,000 square mile watershed — 37 percent of the state's surface area. By the time the Sacramento and San Joaquin river system flows reach the pumps for export, the water is high in bromide (a salt), organic carbon and pathogenic organisms that must be treated before the water can be used for drinking. This treatment is expensive and an increasing health concern for consumers because bromide interacts with disinfection chemicals to create harmful byproducts. (EPA and California Department of Health Service standards for brominated disinfection byproducts are under consideration.)



A nature enthusiast explores the Delta.

CALFED proposes to improve Bay-Delta water quality by reducing the pollutant load to the Bay-Delta system and fostering watershed management. Programs include reducing sediment and pathogens in urban stormwater and wastewater discharges to the system. A more controversial aspect of the program involves changing how water is conveyed through the Delta. One proposal, called the isolated facility or dual conveyance, would take water from the

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League Gathers City Water Conservation Information

In 1998, the League's board of directors received an extensive briefing on water issues in California,which included information about CALFED. In their discussion, the board members agreed that conservation efforts are very important to the viability of cities, and, significantly, are under way in most communities throughout the state.

The board is asking for cities with innovative conservation programs and projects to share this information with the League. If your city has water conservation measures in place, including efforts such as pricing differentials, please send a description, along with any relevant materials, to the League of California Cities, attn: Lorraine Okabe, 1400 K St., Sacramento CA 95814; or e-mail okabel@cacities.org; or fax (916) 658-8240.

Water Terminology and Basic Facts About Water Rights *by Martha Lennihan*

Riparian (rih-*pair*-ee-en) adjacent to, or living on, the banks of a river or other body of water

Appropriative taken for one's own or exclusive use

Groundwater water found underground in a spring or porous rock strata and soils

Surface one or more of the faces of a three-dimensional thing, for example, on the surface of the lake

The riparian right is the original surface water doctrine in the United States. The riparian right is tied to, and part of, the land adjacent to a water source. It authorizes the use of the natural flow on the property adjacent to the water, also known as the riparian parcel. Storage for any length of time, diversion of imported water, and use on nonriparian land are all prohibited. Riparians share on a pro rata basis among themselves, so the right is not specifically quantified. Also, there is no obligation to regularly use the water; riparians can initiate or discontinue use at any time without fear of losing their rights. Riparian rights are generally senior to appropriative rights, dating back to the land patent. Riparianism makes most sense where water is well distributed and plentiful.

Appropriative water rights arose out of necessity. In the late 1800s, California miners ignored the rules of riparianism. In pursuit of gold and other minerals, they dug ditches and built flumes to divert surface water from rivers and streams to distant mining claims. Soon, farmers and ranchers on dry lands were doing the same. The law of appropriative water rights was born. Appropriative rights are suited to California's more arid climate and geographic distribution of water. Both of its major water projects, the State Water Project (SWP) and the Central Valley Project (CVP), rely upon the appropriation doctrine to export huge quantities of water in many of the western states.

California is unique in its retention of a dual system of surface water rights. Customers in cities and counties may be served by any one (or more) of a number of local water service providers, including municipal water departments, water districts and private water companies.

Groundwater rights partially parallel those of surface water rights. The "overlying" groundwater right is similar to the riparian right since it is attached to the land overlying the groundwater basin. However, it attaches to natural groundwater only and is the most senior groundwater right. Most farmers pumping from wells and applying water to surrounding crop lands are overlyers. This right is not quantified except by volume of natural water available, the pro rata rights of other overlyers and, more recently, by the safe yield of the basin.

Safe yield is the volume of water that can be extracted from the basin without causing undesirable results, such as saltwater intrusion or subsidence.

The State Water Resources Control Board (SWRCB) holds the water rights to the SWP, and the U.S. Bureau of Reclamation holds the rights to the CVP (both are, for the most part, post-1914 appropriative rights). Local wholesalers and retailers obtain water by contract with the projects. Retailers then distribute to their customers, often pursuant to local rule or regulation. The customer may be exercising the water right of an entity several times removed in the distribution chain. The water right holder has a strong interest in ensuring that the water is reasonably and beneficially used, to avoid any loss of right.

Typical municipal water rights may cause city officials to grapple with a number of issues. While specific information about the nature of a community's water right should come from the local water department (or district) and legal counsel, some general features of municipal water rights are useful to know. First, "municipal" or "M&I" is a type or purpose of use: municipal and industrial, rather than, for example, agricultural, hydropower or snowmaking. Some municipal providers serve agricultural and other types of uses as well. Many municipal water providers have contract rights (a right to exercise someone else's water right). Otherwise, municipal water rights are typically appropriative surface or groundwater rights. Municipal use is not generally an authorized use of riparian or overlying waters. Therefore, municipal water rights are often the more junior types of rights. This can leave major municipalities at the "short end of the stick" as demand exceeds the available supply. In the groundwater context, the courts have responded to this dilemma with a series of cases that have varied the outcome dictated by traditional water law (see "Competing Visions," page 13). Doctrines of prescription and equitable apportionment (the latter derived from interstate water law) have been invoked to protect municipalities on the low end of the water rights priority pole.

Taken from the City/County Water Newsletter, *August 1996, published by the Institute for Local Self Government and funded by a grant from the Metropolitan Water District of Southern California. See page 3 for author information.*

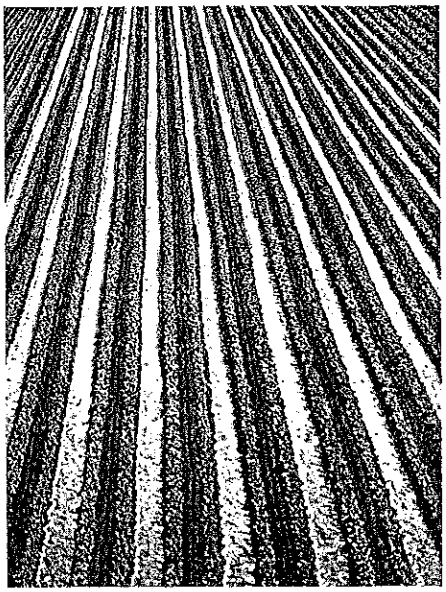
upper Delta, where it is of better quality, and convey it directly to the export pumps. Although smaller than the Peripheral Canal proposed in the 1980s but never built, this facility is raising the same concerns over reducing freshwater flows in the lower Delta. CALFED has postponed a decision on this conveyance alternative for the first seven years of the program to see if it can achieve its goals to improve water quality and the health of Delta fisheries in other ways.

How Could CALFED Change the way Cities Do Business?

CALFED has proposed a range of programs that could affect every city. Increasing regulatory controls on water conservation and recycling, urban stormwater and wastewater treatment discharges, and watershed and groundwater management are under discussion. On the other end of the spectrum are market-based proposals to establish a water transfer program, develop an ecosystem water market, and provide incentives to improve urban and agricultural water use efficiency. The cost of water will almost certainly increase as the costs of implementing CALFED are spread to the beneficiaries of its programs.

How Can Cities Tell if CALFED Is Working?

CALFED has established its own measures of success: provide good water quality for all users; improve the Bay-Delta habitat and ecology; reduce the mismatch between Bay-Delta water supplies and projected uses; and reduce the



Tomato crop irrigation in the Central Valley.

risk from catastrophic breaching of Delta levees. CALFED also has said that any solution must reduce conflicts in the system, be equitable, be affordable, be durable, be implementable and have "no significant redirected impacts" (solve problems in one area by shifting them to another). Cities, which have such a big stake in CALFED's success, need to be involved as CALFED develops its solutions and should hold it accountable for its program goals and principles.

For more information on how cities can better understand and participate in CALFED, see "For More Information About CALFED," at right.

For More Information About CALFED

CALFED has an extensive public information program that includes a website with reports and meeting schedules at http://calfed.ca.gov. For specific questions about CALFED, contact Valerie Holcomb, CALFED public affairs representative, at (916) 654-7137.

Other sources of CALFED information include:

California Urban Water Agencies, Byron Buck, executive director, (916) 552-2929

Association of California Water Agencies, Steve Hall, executive director, (916) 441-4545

State Water Contractors (for cities receiving water from the State Water Project), Steve Macaulay, general manager, (916) 447-7357

Central Valley Project Water Users Association, Jason Peltier, manager, (916) 448-1638

Regional Council of Rural Counties, Valerie Justice, water program coordinator, (916) 447-4806

ONLINE RESOURCES

Association of California Water Agencies www.acwanet.com

CALFED Bay-Delta Program www.calfed.water.ca.gov/

California Department of Fish and Game www.dfg.ca.gov/

California Department of Water Resources www.dwr.water.ca.gov/

California Environmental Protection Agency www.calepa.ca.gov/

California Resources Agency http://ceres.ca.gov/

California State Water Resources Board www.swrcb.ca.gov/

California Water Clearinghouse www.bay-delta.org

Water Education Foundation www.water-ed.org/

ALL ABOUT TOWN

"Your property tax dollar isn't here, Agnes. The state has it."

What is CALFED?

The Bay-Delta is the largest estuary on the West Coast. It supplies drinking water for two-thirds of the people in California and irrigation water for more than 7 million acres of the most productive agricultural land in the world.

The Bay-Delta is also the hub of California's two largest water distribution systems — the Central Valley Project (CVP) operated by the U.S. Bureau of Reclamation, and the State Water Project (SWP) operated by the California Department of Water Resources. In addition to these two major projects, more than 7,000 permitted diverters have developed water supplies from the watershed that feeds the Bay-Delta estuary. These diversions, along with the introduction of exotic species, water pollution and numerous other factors, have had a serious impact on the fish and wildlife resources of the estuary.

For decades, the two systems have struggled to meet the competing demands of the environment and water users, while maintaining good water quality and a levee system that protects local towns and infrastructure from flooding and contaminating the state's water supply. Today, the system is not adequately meeting any of these needs.

The CALFED Process

The CALFED Bay-Delta Program, a cooperative state and federal effort, was established to reduce conflicts in the system by solving problems in ecosystem quality, water quality, water supply reliability, and levee and channel integrity. Its mission is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system.

The CALFED program began work on developing a long-term plan for fixing the Bay-Delta in May 1995. In cooperation with environmental, urban and agricultural interests, CALFED developed three potential alternative solutions that were released in a draft environmental impact statement/ environmental impact report (EIS/EIR) in March 1998.

Exploring Options

In Alternative One, water would be conveyed through existing channels to the south Delta for export to cities and farms. Alternative Two called for widening Delta channels to facilitate the flow of water while providing ecosystem improvements at the same time. Alternative Three would also widen Delta channels, provide ecosystem improvements and a conveyance facility built to transport high-quality water to cities and farms.

CALFED received several thousand comments on the alternatives during the 105-day public comment period. In conjunction with the extensive additional technical analyses, these comments were used to develop a draft preferred program alternative.

The plan was released in December 1998. To achieve CALFED's goals of restoring ecological health and improving water management in the Bay-Delta system, the draft plan relies on a comprehensive water management strategy and an ecosystem restoration plan, which includes an innovative environmental water account.

Mission Statement, Objectives and Solution Principles

The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system.

CALFED developed the following objectives for a solution:

- Provide good water quality for all beneficial uses;
- Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species;
- Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system; and
- Reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic breaching of Delta levees.

In addition, any CALFED solution must satisfy the following solution principles:

Reduce conflicts in the system Solutions will reduce major conflicts among beneficial uses of water.

Be equitable Solutions will focus on solving problems in all problem areas. Improvements for some problems will not be made without corresponding improvements for other problems.

Be affordable Solutions will be implementable and maintainable within the foreseeable resources of the program and stakeholders.

Be durable Solutions will have political and economic staying power and will sustain the resources they were designed to protect and enhance.

Be implementable Solutions will have broad public acceptance and legal feasibility, and will be timely and relatively simple to implement, compared with other alternatives.

Have no significant redirected impacts Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions in California.

Where Does CALFED Stand in its Problem-solving Process?

The CALFED Bay-Delta Program Revised Phase II Report presents a framework for restoring ecological health to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta), providing more reliable water supply for agriculture and cities, and improving drinking water quality in California.

While the Revised Phase II Report represents a great stride forward in developing a balanced program to solve California's environmental and water needs, it is still very much a work in progress. Research and study, negotiations among stakeholders and state and federal public agencies, and public meetings will continue in 1999.

The Revised Phase II Report is available on CD-ROM, in print, and on the CALFED web site at http://calfed.ca.gov. See "For More Information About CALFED" on page 9.

Taken from information supplied by CALFED.